

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re: Case No. 6:19-bk-07981-KSJ
Agape' Assembly Baptist Church, Incorporated, Chapter 11
Debtor.
_____ /

**HERRING BANK, AS TRUSTEE FOR THE BONDHOLDERS
OF AGAPE' ASSEMBLY BAPTIST CHURCH, INC.'S EMERGENCY
MOTION FOR AN ORDER DIRECTING CLERK OF COURT TO ISSUE
A WRIT OF POSSESSION TO THE UNITED STATES MARSHAL SERVICE**

EMERGENCY HEARING REQUESTED

COMES NOW, HERRING BANK, AS TRUSTEE FOR THE BONDHOLDERS OF AGAPE' ASSEMBLY BAPTIST CHURCH, INCORPORATED ("Herring Bank, as Trustee"), by and through the undersigned counsel and pursuant to 28 U.S.C. § 566(c) and this Court's Order Authorizing Sale of Debtor's Real Property, Modifying Confirmed Plan and Granting Other Relief (8203 Palazzo Court, Orlando, FL 32836) (Doc. No. 195) (the "Sale Order"), hereby moves on an emergency basis for the entry of an order directing the Clerk of Court to issue a Writ of Possession in favor of Herring Bank, as Trustee, and in support thereof, states:

STATEMENT OF DIRECT, IMMEDIATE, AND SUBSTANTIAL HARM

Last night, a two-alarm fire consumed the Hiawassee Property.¹ The fire is currently being investigated by the State Fire Marshal. As this Court will recall, the Hiawassee Property was deeded to Herring Bank, as Trustee by the Debtor after considerable judicial effort. Further, the fire occurred just one business day after the foreclosure sale was

¹ See <https://www.orlandosentinel.com/news/crime/os-ne-agape-assembly-baptist-church-20211026-fxfahoa2yran5o5za35jstwzoe-story.html> (accessed October 26, 2021 at 10:00 a.m.)

rescheduled in state court to provide clear title to Herring Bank, as Trustee.² Now, the Debtor is still in possession of the Palazzo Property, despite the requirement to turn over possession to Herring Bank, as Trustee by the Sale Order (as defined herein), and direct, immediate and substantial harm may result if a writ of possession does not dispossess the Debtor of the Palazzo Property as the need to protect that property is apparent.

FACTUAL AND PROCEDURAL POSTURE

1. On December 5, 2019, the Debtor filed a voluntary petition under the provisions of Chapter 11 of the Bankruptcy Code.

2. On October 6, 2020, and with the agreement of Herring Bank, as Trustee, the Debtor filed its Second Amended Disclosure Statement Pursuant to 11 U.S.C. § 1125 for Agape Assembly Baptist Church, Incorporated (Doc. No. 107) (the “Disclosure Statement”) providing for, among other things, treatment of the secured claim of Herring Bank, as Trustee through a process for disposition of its collateral comprised of three parcels of real property referred to as the Hiawasse Property, the Church Street Property and the Palazzo Property. *See* Doc. No. 107 at 8-13. Only the Palazzo Property is at issue in this Motion.

3. On December 8, 2020, this Court entered the Order Approving Second Amended Disclosure Statement and Confirming Amended Plan of Reorganization Submitted by Agape’ Assembly Baptist Church, Incorporated (Doc. No. 128) (the “Confirmation Order”) approving of the treatment set forth in the Disclosure Statement and directing the Debtor to “execute all agreements and undertake the actions contemplated by the Plan.” (Doc. No. 128 at 2).

4. Pursuant to the Confirmation Order, the Debtor obtained entry of the Sale Order for the Palazzo Property providing, *inter alia*:

² *See* Order Granting Plaintiff’s Motion for an Order Rescheduling the Foreclosure Sale attached hereto as Exhibit “A.”

On or before October 1, 2021, the Debtor shall execute and deliver the original Special Warranty Deed in Lieu of Foreclosure (the "Escrow Deed") for the Real Property to Herring Bank, as Trustee c/o Ryan C. Reinert, Esq., Shutts & Bowen LLP, 4301 W. Boy Scout Blvd., Suite 300, Tampa, FL 33607 to be held in escrow pending the closing of the Sale approved herein, which shall take place no later than on or before October 8, 2021 at 5:00 p.m. (the "Closing Deadline").

(Paragraph 3)

The Debtor and all Persons who are presently, or at the Closing of the Sale or recording of the Escrow Deed will be, in possession of any keys to the Real Property conveyed to the Buyer or Herring Bank, as Trustee hereunder are hereby directed to surrender possession of such keys to the Real Property to the Buyer upon Closing or to Herring Bank, as Trustee upon the recording of the Escrow Deed.

(Paragraph 11)

From and after the date of the entry of this Sale Order, all persons and entities, including, but not limited to, the Debtor or any creditor or other party in interest shall not take or cause to be taken any action that would interfere with the transfer of the Real Property to the Buyer or Herring Bank, as Trustee in accordance with the terms of this Sale Order.

(Paragraph 12)

On or before October 11, 2021, Herring Bank, as Trustee shall file with the Court a notice providing all parties in interest with the status of the outcome of the Closing and/or recording of the Escrow Deed.

(Paragraph 19).

5. On October 11, 2021, Herring Bank, as Trustee filed its Notice of Filing Status that Closing did not Occur and Escrow Deed has been Submitted for Recording (Doc. No. 198).

6. On October 18, 2021, Herring Bank, as Trustee provided notice to the Debtor directly that the Special Warranty Deed in Lieu of Foreclosure had been recorded and requested turnover of possession and the keys to the Palazzo Property (the "Demand"). A

true and correct copy of the Demand is attached hereto as Exhibit “B.” It should be noted that the Debtor does not have counsel in this bankruptcy case. *See* Doc. No. 180.

RELIEF REQUESTED

7. No response has been received to the Demand and the possession of the premises remains with the Debtor, despite the clear requirements of the Sale Order and the recording of the Special Warranty Deed. Herring Bank, as Trustee therefore seeks entry of an order directing the Clerk of Court to issue a writ of possession in its favor for the Palazzo Property located at 8203 Palazzo Court, Orlando, FL 32836 pursuant to the Sale Order, Special Warranty Deed and 28 U.S.C. § 566(c) (“the United States Marshal Service shall execute all lawful writs, process, and orders issued under the authority of the United States, and shall command all necessary assistance to execute its duties.”) Herring Bank, as Trustee seeks an emergency hearing pursuant to Local Rule 9013-1(d) or a ruling without a hearing pursuant to Local Rule 9013-1(b) as the need to protect the Palazzo Property is apparent given the recent events.

WHEREFORE, Herring Bank, as Trustee, asks this Court issue an Order on an emergency basis directing the Clerk of the Court to issue a Writ of Possession ordering the United States Marshal Service to put Herring Bank, as Trustee into possession of the property located at 8203 Palazzo Court, Orlando, FL 32836, and for such other and further relief as this Court deems just and proper.

Dated: October 26, 2021.

/s/ Ryan C. Reinert

RYAN C. REINERT

Florida Bar No. 0081989

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– and –

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Email: jknight@bmwb-law.com

Attorneys for Herring Bank, as Trustee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and copy of the foregoing has been provided this

October 26, 2021, through the CM/ECF system to:

Audrey M. Aleskovsky

Office of the United States Trustee

George C. Young Federal Building

400 West Washington St, Suite 1100

Orlando, FL 32801

With a copy by U.S. Mail and Electronic Mail to:

Agape' Assembly Baptist Church, Incorporated

2425 N. Hiawassee Rd.

Orlando, FL 32818

c/o Ingrid Bishop (dringridbishop@gmail.com)

/s/ Ryan C. Reinert

Attorney